

ORIGINAL

Decision No. 35107

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of EARL S. CARDWELL and LEMNA M. CARDWELL, his wife, to Sell, and CARL J. STANLEY and HARRIETT K. STANLEY, husband and wife, and J. E. KIRKMAN and ALICE J. KIRKMAN, husband and wife, to Buy Warehouse Real Property,

and
The Application of J. E. KIRKMAN and LYON MCKINNEY, co-partners, to Transfer Warehouse Permit to CARL J. STANLEY and J. E. KIRKMAN, co-partners, and to Continue the Warehouse Business under the Present Name of Chowchilla Warehouse Company.

Application No. 24780

BY THE COMMISSION:

O P I N I O N

This application involves the sale of warehouse properties and business, the issue of a 5%, \$11,000 installment note, and the execution of a real estate mortgage and a chattel mortgage to secure the payment of the note.

Earl S. Cardwell and Lemna M. Cardwell, his wife, are the owners of the following described real property:

"All that portion of Lot one (1) of Dairyland Acres, according to map entitled, 'Map of Dairyland Acres', filed and recorded in the office of the County Recorder of the County of Madera, State of California, April 7, 1914, in Vol. 4 of Maps at page 3, bounded and described as follows, to-wit:

"Beginning at a point on the north-easterly right of way line of State Highway No. 99 which bears north $44^{\circ} 45'$ east 20 feet and north $45^{\circ} 15'$ west 25 feet from the most southerly corner of said Lot; thence following said right of way line north $45^{\circ} 15'$ west 250.7 feet to the northwesterly line of said Lot; thence following said line north $44^{\circ} 45'$ east 240.6 feet; thence south $45^{\circ} 15'$ east 250.7 feet; thence south $44^{\circ} 45'$ west 240.6 feet to the point of beginning, containing 1.39 acres, more or less."

On this property are situate two warehouses designated in applicants' petition as Chowchilla Warehouse Company, Warehouses No. 1 and 2. Warehouse No. 1 has approximately 8,700 square feet of floor space and warehouse No. 2, 10,800 square feet.

By Decision No. 34512, dated August 19, 1941, in Application No. 24282, the Commission authorized Earl S. Cardwell to lease said warehouse properties to J. E. Kirkman and Lyon McKinney, copartners. The lease contains an option to purchase the properties. Since then Lyon McKinney has waived his rights under the option. Earl S. Cardwell now asks permission to sell the real property described herein and the improvements situate thereon, together with certain warehouse equipment to Carl J. Stanley and Harriett K. Stanley, husband and wife, as Joint Tenants, as to an undivided one-half interest, and to J. E. Kirkman and Alice J. Kirkman, husband and wife, as Joint Tenants, as to an undivided one-half interest. The purchasers have agreed to pay for the properties, \$14,000. Of this sum, they will

pay \$3,000 in cash and issue to the seller their \$11,000, 5% note. The interest on the note is payable annually, while the principal is payable at the rate of \$2,200 per annum, the first principal payment being due January 15, 1943.

Carl J. Stanley and J. E. Kirkman will operate the warehouse properties as copartners under the name of Chowchilla Warehouse Company, and under the rates, rules and regulations now on file with the Railroad Commission. While the Commission's Decision No. 34512 requires J. E. Kirkman and Lyon McKinney, copartners, to adopt the rates filed by Earl S. Cardwell, such adoption notice has not yet been filed with the Commission. The order herein will require Carl J. Stanley and J. E. Kirkman, copartners, to adopt the rates of Earl S. Cardwell who operated the said warehouses under the name of Cardwell Grain and Milling Company and whose rates are still on file with the Commission.

Copies of the proposed real estate mortgage and of the chattel mortgage, together with a copy of the proposed note, have been filed with the Commission. We have examined the same and find them to be in proper form.

ORDER

The Commission having considered applicants' request and it being of the opinion that this is not a matter on which a hearing is necessary, and that this application

should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

1. Earl S. Cardwell and Lenna M. Cardwell, his wife, be, and they are hereby, authorized to sell, after the effective date hereof and on or before June 30, 1942, to Carl J. Stanley and Harriett K. Stanley, husband and wife, as Joint Tenants, as to an undivided one-half interest, and to J. E. Kirkman and Alice J. Kirkman, husband and wife, as Joint Tenants, as to an undivided one-half interest, the warehouse properties, both real and personal, described in this application.

2. J. E. Kirkman and Lyon McKinney, copartners, may transfer their warehouse business conducted under the authority granted by Decision No. 34512, dated August 19, 1941, to Carl J. Stanley and J. E. Kirkman, copartners, doing business under the name of Stanley and Kirkman, and who may operate said warehouses under the name of Chowchilla Warehouse Company.

3. Carl J. Stanley and Harriett K. Stanley, husband and wife, and J. E. Kirkman and Alice J. Kirkman, husband and wife, may, after the effective date hereof and on or before June 30, 1942, issue in part payment for the aforesaid properties their note for the sum of \$11,000, said note to be substantially in the same form as the note on file in this proceeding, and to secure the payment of said note by the execution of a real estate mortgage and the execution of a chattel mortgage in substantially the same form as the real estate mortgage and the chattel mortgage filed in this pro-

ceeding, provided that the authority herein granted to execute a real estate mortgage and a chattel mortgage is for the purpose of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said real estate mortgage and said chattel mortgage as to such other legal requirements to which said real estate mortgage and said chattel mortgage may be subject.

4. Earl S. Cardwell and/or J. E. Kirkman and Lyon McKinney and Carl J. Stanley and J. E. Kirkman, copartners, shall within sixty (60) days from the effective date of this order, and on not less than five days' notice to the Commission and to the public, supplement the tariff now on file with this Commission in the name of Cardwell Grain and Milling Company, said Earl S. Cardwell and/or J. E. Kirkman and Lyon McKinney, copartners, effecting a withdrawal therefrom and Carl J. Stanley and J. E. Kirkman, copartners, adopting and establishing said tariff as their own.

5. That the authority herein granted will become effective when Carl J. Stanley and J. E. Kirkman, copartners, have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which minimum fee is Twenty-five (\$25.00) Dollars.

6. Carl J. Stanley and J. E. Kirkman, copartners, shall, if they acquire the aforesaid properties, file with the Railroad Commission a copy of their partnership agreement covering the operation of the warehouse business referred to herein; a copy of the real estate mortgage and a

copy of the chattel mortgage executed under the authority herein granted, together with a statement showing the date on which they acquired said warehouse properties.

7. The consideration paid for said warehouse properties by Carl J. Stanley and J. E. Kirkman, copartners, shall not be urged before this Commission as determining the value of said properties for any purpose other than the transfer herein authorized.

Dated at San Francisco, California, this 10th day of March, 1942.

Justice J. Coe
Ray L. Riley

Francis D. Havens
Arthur H. Hodge
Commissioners.

